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REVIEW OF PRIORITY THEMES, IN ACCORDANCE WITH COMMISSION RESOLUTION 1/1 ON STRATEGIC MANAGEMENT BY THE COMMISSION ON CRIME PREVENTION AND CRIMINAL JUSTICE OF THE UNITED NATIONS CRIME PREVENTION AND CRIMINAL JUSTICE PROGRAMME

Status of preparations for the World Ministerial Conference on Organized Transnational Crime

Report of the Secretary-General

Addendum

Conclusions and recommendations of the meeting of the Ad Hoc Expert Group on Managing the Risk of Violence in a Criminal Justice System: a Framework of Analysis, held at Chicago, United States of America, from 18 to 20 August 1993

The Secretary-General has the honour to submit to the Commission on Crime Prevention and Criminal Justice the conclusions and recommendations of the meeting of the Ad Hoc Expert Group on Managing the Risk of Violence in a Criminal Justice System: a Framework of Analysis, held at Chicago, United States of America, from 18 to 20 August 1993 (see annex).

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Annex

CONCLUSIONS AND RECOMMENDATIONS OF THE MEETING OF THE AD HOC EXPERT GROUP ON MANAGING THE RISK OF VIOLENCE IN A CRIMINAL JUSTICE SYSTEM: A FRAMEWORK OF ANALYSIS, HELD AT CHICAGO, UNITED STATES OF AMERICA, FROM 18 TO 20 AUGUST 1993

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INTRODUCTION

1. The Economic and Social Council, in its resolution 1992/22, section VI, of 30 July 1992, determined that one of the priority themes to guide the work of the Commission on Crime Prevention and Criminal Justice would include national and transnational crime, organized crime and economic crime, including money-laundering.

2. Furthermore, in its resolution 1992/23 of 30 July 1992, the Council requested the Secretary-General to continue the analysis of information on the impact of organized criminal activities upon society at large, including data on the nature, extent, forms and dimensions of organized crime, and on legislative measures. In the same resolution, the Council took note of the practical measures against organized crime formulated by the International Seminar on Organized Crime, held at Suzdal, Russian Federation, from 21 to 25 October 1991, and offered them for consideration by Governments in their efforts to enhance the struggle against organized crime. In paragraph 33 of its practical measures, contained in annex II to Council resolution 1992/23, the Seminar emphasized the importance of the protection of witnesses in combating organized crime, recommending that national criminal justice systems should pay close attention to provisions, programmes and any legislation aimed at providing for the security of witnesses.

3. The protection of victims has long been a matter of concern for the international community, as well as for national criminal justice systems. A special class of victims are those who assist and contribute to the criminal justice process, including judges, jurors, prosecutors and witnesses. Any assault on such persons is a challenge to the ability of a Government to exercise its responsibilities, and it demands a measured response. Since the most dramatic challenges to criminal justice systems are posed by organized crime and terrorism, it follows that the protection of judges, jurors, prosecutors and witnesses is essential to the prevention and control of serious crime. While global statistical data are not available on the types and motivations of attacks on criminal justice systems, violence from disappointed litigants, fanatics and mentally disturbed persons must also be considered in this context.

4. The conclusions and recommendations presented below are intended for authorities charged with protecting criminal justice systems from intimidation or violence. Their purpose is to offer concepts, considerations and an analytical framework usable in any society to protect the functioning of its system. By "system" is meant the persons, institutions and structures involved in the mission of investigating, charging and adjudicating criminal cases.

5. An initial assumption is that no matter how much money, human resources or equipment is committed to a programme, there can be no guarantee of total security. Even maximum application of every useful idea contained in the conclusions and recommendations below can only reduce the degree of external risk to the integrity and safety of a system and its participants. Moreover, the transfer of mechanisms of security developed to serve one society or culture carries no guarantee of success when applied to another.

6. The conclusions and recommendations presented below offer no panaceas, but rather a method by which to evaluate and manage risk factors, which, it is hoped, will have cross-cultural utility. This method of risk management is intended to provide a general theory or framework with which policy makers and programme managers in diverse societies can analyse the types of threats to the functioning of their criminal justice systems and can design disincentives to those threats appropriate to their own cultures.

7. Every society faces threats from different persons and groups to the functioning of its criminal justice system. The factors that encourage those persons to attempt to interfere with the system, or that

furnish disincentives to such interference, may be similar or vastly different in various systems. However, the universality of human nature makes it worthwhile everywhere to analyse the functioning of a criminal justice system to identify how to create disincentives to attempted interference with it, by minimizing the results of any interference and by maximizing the costs to the criminal and the difficulty involved in any such attempt.

8. Similarly, the bureaucratic and budgetary reality of limited resources dictates the need for a rational process to determine the level of resources necessary to permit the functioning of a criminal justice system without undue interference, and to allocate such resources. A risk management strategy is intended to provide a process of identifying threats, examining vulnerabilities, and designing disincentives to interference, without attempting to impose culture-bound solutions of any particular country or approach.

9. The conclusions and recommendations presented below deal with the types of threats to be guarded against in risk management, including emotional and/or irrational, symbolic, case-specific (or systemic) and exemplary (or deterrent) violence; the practical requirements for making and implementing an intelligent threat assessment in individual situations and in categories of situations; the functioning of the authority that makes such assessments and the relationship between assessments and resource allocations; appropriate responses, including the categories of awareness programmes, site hardening, personal protection and intelligence; and the need for data collection and research, and the policy consequences of adopting a risk management philosophy for a criminal justice system.

I. RISK AND GENERAL CHARACTERISTICS OF THE SYSTEM

10. Risk management should logically begin with an examination of the prosecutorial and judicial system from the point of view of why a potential attacker feels that an attempt to disrupt the system, by threatening or assaulting a judicial officer, prosecutor or witness, will benefit his or her cause. The level of risk is a function of the ease and effectiveness of threats and violence in interfering with the functioning of the system, the anticipated probability and severity of sanctions, and sometimes the perception by the criminal actors of the fairness or injustice of the system.

11. In the terminology of economic analysis, the decision by the criminal on whether or not to use violence or threats against an individual representative of the judiciary, prosecution or police, or against a citizen who may be able to furnish incriminating evidence as a witness, is normally determined by a conscious or unconscious, instinctive cost-benefit analysis of the violence or threat transaction, that is, whether the contemplated threat or attack will yield a result that is worth the possibility of counteraction.

12. Illogical factors certainly may intrude on this calculation, such as obsessive hatred by a gang boss for an official who poses little objective threat, which causes the boss to order a high-risk assassination attempt. Nevertheless, common experience and common sense dictate that the danger of interference with the functioning of the criminal justice system and the level of personal risk increase with factors such as the ease of inflicting violence and escaping detection, and the probability that such action will succeed in obstructing the function of the system.

13. Conversely, factors that make detection and punishment for threats or violence more probable or render such acts unproductive because the system functions to overcome them serve to decrease the incentive for violence. Other factors, such as the severity of sanctions, may have dual effects, increasing the incentive to interfere with the system when previous crimes of this type have remained unpunished, but serving as a deterrent when heavy sanctions are effectively applied.

14. Simply stated, the way a criminal justice system is structured and how it functions must be analysed to know what makes it vulnerable or resistant to improper influences. This evaluation should result in strengthening weak links in the chain before they are attacked, whether by new laws to protect witnesses, changes in trial procedure or simply by provision of necessary resources. Through this evaluation process disincentives can also be designed.

15. Some conceptual distinctions should be made about the forms of violence confronting a criminal justice system. They can be classified into four distinct types, differentiated according to their motivations:

(a) Emotional or irrational violence, which is typically associated with the assertion of the authority of the criminal justice system over a person, who reacts with violence because of the stress involved or because of psychological instability: The courtroom is an inherently dangerous workplace, as are police stations, prosecutors' offices and other places where decisions of great significance to the persons affected are being made, decisions affecting their liberty, property and dignity. This environment and process place persons under tremendous stress, and that stress can easily explode in unpredictable, often spontaneous, violence. The types of security measures that protect the criminal justice system from emotional and irrational violence also serve as basic precautions against the more premeditated types of violence. Consequently, the capacity to control emotional or irrational violence directed against representatives of public authority should be considered an essential part of criminal justice system management;

(b) Symbolic violence, victimization of a person because of the authority figure that he or she represents: Thus, terrorists attack judges because of their status as symbols of state authority, just as ambassadors are at risk in foreign countries because they represent their countries;

(c) Case-specific (or systemic) violence, a premeditated attack upon a person because of the function he or she performs in a particular case or context, commonly directed towards witnesses or other participants in the system because of their roles in a particular case: Thus, a prosecutor or a policeman who is investigating a particular case may be threatened or attacked to discourage or eliminate interference with criminal profits and the threat of ultimate prosecution and conviction that he or she creates;

(d) Exemplary (or deterrent) violence, a mixture of symbolic violence and case-specific (or systemic) violence: Whereas case-specific violence relates to an ongoing or anticipated investigation or prosecution, exemplary violence is used to deter future cooperation against the criminal group seeking to protect its activities. A witness or his or her relative may be killed in order to show future potential witnesses the consequences of furnishing evidence.

16. Symbolic violence, case-specific (or systemic) and exemplary (or deterrent) violence normally occur as a result of at least an unconscious cost-benefit analysis, making it useful to devise strategies to remove incentives for and vulnerabilities to threats. Factors that increase or decrease the risk with respect to various actors in the system (e.g. judges, jurors or laymen, prosecutors and investigating magistrates, police and witnesses) are considered below.

17. The risk of violence against judges is connected to the symbolic value of the office and of the individual, that is, visibility, whether the decision-making process is collegial or monocratic, and the amount of discretion exercised.

18. Since ancient times, the figure of a judge has always embodied the concept of state authority. As a consequence, whenever a politically dissatisfied group chooses to express its rejection of state authority

by violence against the symbols of that authority, the judiciary is at risk. Purely random violence against the judiciary would be terribly difficult to counteract; in Italy, for example, there are approximately 8,000 members of the magistrature (a constitutional institution that includes prosecutors, preliminary hearing judges and trial and appeals judges), and in the United States of America, with its greater population and separate federal and state judicial systems, there is a correspondingly higher number. Although such random violence is not unknown, a motive or pattern can usually be ascertained for most threats or attacks.

19. The most obvious factor that tends to personalize a radical group's anti-authoritarian animus and focus it on an individual is that individual's public actions or public statements. For a judge, the most probable cause of risk is personal involvement in a proceeding against persons with whom the terrorist group feels solidarity. Violence rather than threats are far more likely to result from an exercise of past authority, as there is no particular future action to influence or deter by means of a threat.

20. When terrorist groups threaten a judge, their motivation is usually connected to an ongoing action in which the judge can be publicly intimidated into abandoning his or her public function. Thus, threats by terrorists may be directed not only against a presiding judge but also against lay judges and any representative of the state who exercises a significant function, in order to intimidate them in discharging their duties and thereby obstruct the functioning of the system.

21. Organized crime groups are more likely to seek a corrupt exercise of judicial discretion, procured and conducted covertly. The desire of organized crime to gain corrupt advantage by its threats depends on finding a judge or other official who can be influenced in the exercise of substantial power of discretion, and may begin with efforts to corrupt and then progress to threats and violence. An unreviewable exercise of discretion is an invitation to efforts to corrupt or intimidate. A legal system that allows a sentencing judge to impose a wide range of possible sanctions without any need to justify the sentence imposed, or without any appellate accountability for the sentence, leaves space for corruption or intimidation. A sentencing regime in which clear, easily applied guidelines limit judicial discretion to a narrow range and allow or require a review of the sentence, however, reduce the possible effectiveness of threats.

22. The physical elimination of a judge can be a consequence of a past official action and can thus intimidate future action by other judges. Assassination can also be future-directed, in order to prevent the conduct of a trial or the imposition of a sentence. Judges who perform a monocratic, that is a peculiarly individual, not easily substitutable function are more at risk for this motive than are judges who work in a panel or in a collegial manner. Similarly, judicial bodies that function under the principle of unanimity, as do federal juries in the United States, are vulnerable to the intimidation (or bribery) of only one member, whereas bodies that function according to a majority principle are far more resistant to corrupting influences.

23. Adoption of various forms of identity protection or anonymity to protect judges and jurors has limited utility. Colombia is experimenting with anonymous judges in a defined category of high-risk cases, although it is not known how successfully a judicial establishment can maintain the necessary level of secrecy. Other countries might encounter constitutional problems with such a system. However, the use of juries in which the members are identified only by number rather than by name has been allowed in United States courts.

24. The risk of violence against prosecutors and investigative magistrates is connected to the visibility of the prosecutor, his or her unique qualifications as opposed to system-wide qualification, the ease of replacement and sharing of responsibility and information, and the allocation of functions and risks between prosecutors and police, and between prosecutors and judges.

25. Because their work is inherently newsworthy, prosecutors and investigative magistrates are the focus of public and news media attention. They frequently become the symbolic figureheads of controversial or dangerous investigations, sometimes against their will. If a prosecutor is politically or personally motivated to claim public attention, it is logical to assume that the likelihood of symbolic violence will be increased. Prosecutors and investigating magistrates, and the public, should therefore recognize that encouragement of personal publicity creates risks and costs that might otherwise be avoided.

26. The experience of the pool of anti-mafia investigating magistrates at Palermo has suggested that a collegial rather than an individual method of acquiring and utilizing evidentiary information also reduces the perception of risk by the individual magistrate and that, when a tragedy occurs, interference with the functioning of the system is significantly reduced. Logically, the incentive to kill a prosecutor or investigative magistrate is high when that person has a unique capability to gather and assemble information and evidence, and to organize and initiate prosecutive action. When a number of persons contribute to those functions by sharing responsibility and information, the removal of any one of them is less significant.

27. That observation is linked closely to the relationship between risk and the unique individual qualifications and contributions of prosecutors and investigating magistrates. If only one person among those who may potentially carry on an investigation or prosecution or otherwise threaten some criminal interests or organizations has the motivation and ability to effectively carry out the function and cannot readily be replaced, that person is a target against which it is cost-effective to concentrate threats and attempts.

28. The equation changes, however, if the personnel system is full of highly motivated and qualified persons who are perhaps irrationally but idealistically motivated to carry on the work of a murdered colleague. The criminal group must take into consideration the necessity to successfully kill not one but more magistrates in an effort to disrupt the unwelcome investigations and prosecutions, measured against the increased risk stemming from having to organize and execute multiple attacks and from the adverse governmental and public reaction.

29. Where the risks fall in a given sector of the criminal justice system, that is, on judges, prosecutors or the police, depends very much on how that system allocates functions and the attendant risks. For example, before the 1989 revision of the Italian Code of Criminal Procedure, a prosecutor played a less important role in developing evidence and guiding investigations than did the giudice istruttore, a form of investigating magistrate. Currently, the task of guiding inquiries by the police agencies and directly conducting interrogations is much more the province of the pubblico ministero, or prosecutor. Consequently, the risk factor is now largely transferred to the pubblico ministero.

30. The common law English prosecutorial tradition has no counterpart of the code provisions in civil law countries obligating the police to report all crimes to the prosecutor and to thereafter execute all investigative directions from the prosecutor or inquiring magistrate. English and United States police have historically been the principal actors in the collection of evidence, often bringing a case file to the prosecutor only when the investigators have decided that the evidence is complete and the case is ready for trial.

31. While that police-prosecutor relationship is steadily evolving in the direction of greater prosecutorial participation and influence, it may serve to explain why relatively few common law prosecutors have been the subjects of threats or violence.

32. The risk of violence against police is influenced by their normally strong institutional, rather than individualistic, practices and their ability to respond to threats and violence.

33. In many countries, there is a strong tradition of personal independence, often having constitutional foundations, for the judiciary and even prosecutors. This independence, when it means that the individual has a monopoly of information that can be destroyed by an assassination, makes the judge or prosecutor an attractive target. Well-managed, modern police and investigative agencies are more collectively or hierarchically oriented, according to a structure in which the individual is subordinated to the good of the whole. Sources of information are regarded as assets of the organization rather than of the individual, even though access to those assets is controlled on a "need-to-know" principle. Information is regularly reduced to documentary form, subject to retrieval and availability to authorized persons. Investigative initiatives are undertaken with managerial authorization, after collegial planning, and not as individual adventures.

34. Good police organizations do not tolerate the undisciplined, individualistic behaviour of television and film detectives. Accordingly, investigators in such departments are not subject to the risks of planned violence to the extent depicted in the media, although the danger of reactive violence in operational situations is always present. A high level of violence directed against the police may, therefore, indicate a less than optimally organized and managed department, where police officers become targeted as individuals - rather than being protected by personnel rotation, division of tasks to spread responsibility, and other depersonalizing strategies - and attackers are encouraged to react to the perception of an individual, rather than an institutional, menace.

35. As was the case with prosecutors, there is also a trade-off between the accomplishments that can be achieved by one highly qualified and aggressive individual and the resulting concentration of risk and increase in vulnerability of the system to interference. When only one police officer is sufficiently motivated and able to pose a threat to a criminal organization, the risk factor rises. When there are numerous ready replacements who pose a comparable risk to criminals, the motivation for threats and violence is reduced. This suggests that, from the viewpoint of resistance to interference, it is more important to organize and train a unit to a high average level of accomplishment, with substantial division of responsibility, rather than concentrating responsibility and accomplishments in the person of one outstanding individual. Even with such a policy of spreading the risk, a symbolic assassination may still occur because it can serve to lower overall motivation levels. However, at least the incentive for such an attack is reduced when it will have only marginal impact in a specific case or on a particular systemic function.

36. The police is the agency best equipped to respond to gang or terrorist violence. Judges and prosecutors have relatively limited and largely reactive areas of legal discretion. The police, however, is a multifunctional institution, often a large and complex organization, in which many activities are discretionary. If a drug gang threatens a police agent, the commanding officer can normally exercise a largely unreviewable discretion in assigning, for example, both drug law enforcement and routine patrol resources to the market area controlled by that gang until the economic and personal disadvantages of threatening the police become obvious. However, experience in some countries has shown that this unreviewable discretion can lead to practices that are unacceptable. Although any properly motivated law enforcement organization would quickly identify and take action against any form of "private justice", there have been cases where the police have taken revenge when they experienced violence against their ranks from criminal or subversive groups.

37. The risk of violence against witnesses is influenced by the usability of evidence collected before trial, the legal consequences of a witness changing his or her story, the evidentiary alternatives to witness testimony, and the use of physical protection and anonymity to safeguard witnesses. Threats

and violence against witnesses are probably the most common means of attacking the criminal justice system, as witnesses are normally unarmed, unprotected and readily found by the criminal and often have limited social, economic and educational resources.

38. Witness protection programmes, which rely on physical protection when necessary but may emphasize anonymity through relocation and the creation of a new identity, function well when it is cost-effective and feasible for the government to assume the responsibility of the entire family group that may be subject to retaliation and when the economic and social circumstances of the witness make this an attractive option. Generally, relocation works best when it represents a net improvement in the social and economic prospects of a witness and of his or her family, which is typically true only of the less fortunate members of society.

39. At least one country is also experimenting with the use of anonymous witnesses, whose identities are not revealed to the defence counsel. This practice raises obvious concerns about the ability of a defendant to test the accuracy and reliability of witness testimony, and will have limited application in most legal systems.

40. A dilemma frequently encountered is the conflict between the desirability of recording the testimony of a witness in a usable evidentiary form, before an assassination or threat takes place, and the preference for oral testimony and confrontation by an attorney for the accused, before permitting any testimony or statement to be relied upon as a form of proof. Several legal systems adjust the competing interests by allowing prior judicial declarations as evidence if there is a demonstrated need, and the testimony, when given, was subject to cross examination, as in a previous hearing or trial, or if there are other satisfactory guarantees of trustworthiness.

41. Another common problem is the witness who incriminates an accused and then tells a different story, after being threatened. Partial corrective measures are sanctions for telling contradictory stories, even if it cannot be proved which one is correct, and the ability of the court to choose the first statement as constituting a more truthful account, if the witness fails to give a convincing explanation for having changed the testimony.

42. From a strategic point of view, the importance of individual witnesses can be diminished by emphasizing alternative methods of proof, such as scientific evidence and the use of evidence gathered by electronic surveillance. For example, an unsophisticated approach to the investigation of a criminal or terrorist organization might focus on investigating and gaining the cooperation of one marginal member of the gang and then on commencing a prosecution based on the perhaps partial knowledge of that person, whose continued safety and cooperation would then be absolutely essential to the prosecution. A more sophisticated approach might involve using the information gained from the cooperation of that one marginal member to persuade the proper legal authority of the necessity and appropriateness of placing an entire series of listening devices, deliberately focusing on tracing activities through the layers of insulation characterizing the gang, while corroborating the electronic surveillance evidence with physical surveillance, and culminating with exhaustive seizures of incriminating and corroborating objects. An overwhelming case can thus be built, without having to rely on the perhaps weak testimony of the initial witness, with the synergetic result of producing even better witnesses than the one who originally cooperated, as more gang members would cooperate in the face of almost certain conviction, furnishing testimony well supported by the electronic surveillance and other investigative techniques.

II. RISK MANAGEMENT FOR JUDICIAL AND PROSECUTORIAL OFFICERS

43. High-risk factors include high visibility, a unique or essential role in the process and the ability to exercise great discretion. Risk is reduced by anonymity, divided responsibility, substitutability and reduced discretion. Policy makers charged with the responsibility of planning the protection of judicial or prosecutorial officials have numerous courses of action available, only some of which may be feasible, however, because of cost, political or personal considerations. These alternative options or courses of action may generally be grouped in at least four categories, which are primarily applicable to the main actors of the criminal justice system: awareness programmes, site hardening, personal protection and intelligence.

44. Awareness programmes require the person to be protected to realize that personal safety is ultimately an individual's own responsibility. A person must not allow himself or herself to become entirely dependent on alarms, bodyguards or physical barriers to ensure personal safety. When a judicial officer or prosecutor feels that he or she may be the target of violence, bodyguards, armoured vehicles, and security surveys and precautions at his or her residence and office become valuable tools in the effort to reduce the assault possibilities. All of these proactive efforts should be considered and appropriately used when available. However, these efforts are costly and may not always be available, particularly for those who are at comparatively low risk.

45. The single most effective personal protective measure lies in the potential target. The key is vigilance. A person who is a potential target must maintain an attitude of safety awareness, which can be incorporated into his or her professional, social and personal life at little cost and is a prerequisite for an effective personal security plan.

46. There is much that prospective targets can do with little effort or financial cost to reduce their chances of becoming victims of hostile action. Remaining alert and cognizant of the surroundings can literally save a person's life. Security specialists can study past assaults for motives and methods of attack and communicate valuable proactive habits to prospective targets.

47. Site hardening can be defined as protective activities surrounding any structure that has been identified as a potential attack site. It involves not only enhancements to the perimeter of the structure, but also control of the movement of individuals within the structure. Generally, the workplace and residence of a person who is a potential target are the safest places for him or her to be. Familiarity, management, access control and permanency are in the person's favour. These advantages can be reinforced by site-hardening enhancements and activities such as the following:

(a) Changing a residence to a more secure building or location, which may be desirable for security reasons but prohibitive from the point of view of the cost and disruption involved;

(b) Controlling entry to the site by the use of fences, window and door security systems and structural enhancements to restrict the movement of vehicles towards the structure;

(c) Enhancing access control at the points of entry to the structure using not only controls by security personnel, but also magnetometers, X-ray machines, thermal neutron analysis systems, explosive-detecting canines, interview and profiling techniques and areas set off for full body searches;

(d) Establishing security programmes where not only all incoming mail, but also all other supplies and materials being delivered or introduced into the structure are subjected to thorough examination for potential explosives or weapons;

(e) Setting up secondary perimeters within the subject building, re-examining individuals as they enter certain offices or courtrooms;

(f) Establishing barriers of bomb resistant and/or bulletproof material, in order to protect specific areas within offices or courtrooms, including saferooms;

(g) Establishing programmes where on-duty response personnel, some with sophisticated equipment and a high level of training, are available within targeted structures for immediate response to a location of concern;

(h) Testing and verifying the activities listed above on a regular basis, with awards and sanctions being applied and levels of alertness maintained in order to ensure effectiveness.

48. Personal protection obviously overlaps the activities enhancing the security of the targeted individual within a site-hardened location. By "personal protection", however, is meant the individuals and procedures that move with the targeted individual, not only within the site-hardened structure but also throughout the community. The probability of an attack is based on time, place and level of difficulty, which an attacker seeks to have in his or her favour. If any of these are not conducive to a successful assault, the attacker may withdraw permanently or temporarily. The probability of an assault can be reduced by conscientiously applying the following defensive tactics and assets:

(a) Trained, armed and appropriately equipped bodyguards who move with the targeted person wherever he or she may go;

(b) Bullet-resistant and explosive-resistant vehicles that can be used to transport the targeted person;

(c) Sophisticated and encrypted communication capabilities that allow protective personnel to communicate not only among themselves, but also with other entities that could respond to their needs;

(d) Avoidance of predictable behaviour; alteration of times, travel routes and business and personal routines, as well as of personalized parking spaces or vehicle plates;

(e) Use of appropriate surveillance detection techniques and constant awareness of the targeted person's environment, particularly vehicles or persons lingering near his or her residence or office or following his or her movements;

(f) Knowledge of and training with evasive procedures, including knowing how to handle a vehicle in emergencies and to respond immediately when evasive action is appropriate;

(g) Movements and practices designed to enhance the anonymity of the potentially targeted person;

(h) Personal protective wear (body armour) in certain situations.

49. Intelligence is the fourth area of activity involved in the protection of a potentially targeted individual. The personally motivated assailant, pushed by some real or imagined grievance against members of the criminal justice system, may be virtually impossible to identify in advance. However, where the threat to the targeted person is from an established group or organization, there is no better protection than accurate and proactive intelligence activity. The identification of a specific threat is critical to defeating that threat. Active intelligence efforts must be undertaken and must constantly be

coordinated with the protection of targeted individuals. Obviously, the identification and defeat of persons planning an assault or a bombing before the incident occurs are preferable to countering such a plan at a site where a targeted individual is present.

50. Even at the level of the individual, networking or intelligence-gathering can be an effective preventive measure. Neighbours and co-workers can inform a targeted person of information they obtain regarding suspicious activity, inquiries or persons. Critical information should be conveyed to the forces of public order and to any special protective services.

51. Counter-intelligence measures, such as legislation that prohibits the collection of certain types of personal information on defined categories of persons at risk, also merit mention. Thus, physical surveillance of the movements of a judge presiding over an anti-terrorist court might be prohibited, because of the clear and present danger that such surveillance may be a prelude to an attack.

III. RISK MANAGEMENT FOR WITNESSES AND JURORS

52. It is perhaps inevitable that practical efforts to reduce risk to non-professional members of the criminal justice system, that is, witnesses everywhere and jurors in the common law system or lay judges or assessors in civil law systems, will occur in the context of a particular case and will be focused on a particular individual or group. However, these efforts will be of reduced effectiveness if they occur in isolation and are put in place on a piecemeal basis. Effective protection of witnesses and lay judges and/or jurors is complicated and makes a great many demands upon a wide range of criminal justice bodies and other agencies. There is thus a clear benefit to a comprehensive approach and definition of policy, at appropriate levels.

53. Policy issues also arise at the international, national and local levels. Furthermore, there may be a useful role for policy development and coordination at the regional level. Some nations are better placed than others, if only in terms of their national geography, to provide protective arrangements. Where does a threatened witness find sanctuary on the territory of a small island nation?

54. In order to redress these differences, regional and global solutions need to be explored to permit cross-border movement; such solutions involve immigration and other issues of international relevance. These endeavours need to be accompanied by proactive gathering and exchange of information about the threat and to be based on knowledge of laws and administrative arrangements in different jurisdictions.

55. At the national level, there is considerable advantage in cohesive arrangements serving the needs of the entire nation. Centralization reduces the demands upon the diverse resources whose coordination is essential for effective countermeasures. There are examples of effective national programmes implemented by dedicated units, some operating on a statutory basis, that are worthy of study.

56. National law can be an important asset. While it is relatively common to achieve partial identity changes with the cooperation of key agencies, in few jurisdictions is it possible to achieve a complete change of a threatened person's identity without the authority of law. It also seems reasonable and necessary to afford legal indemnity to those agencies and enterprises that assist in this process.

57. National law can enhance the protection of witnesses and jurors by making it an offence to assault, beset or cause damage to property of persons with intent to influence evidence or deliberations. Laws can provide that any crime committed against a witness or juror in connection with a given case should be regarded as an aggravated form of the offence and should attract additional penalty. Another specific

legal provision that may be helpful would be to make it an offence to seek to identify a person whose true identity is being protected by judicial order.

58. With respect to court processes, there are numerous protective measures that can be taken to reduce the vulnerability of witnesses and jurors, such as greater protection of their identity and locations. Technology is aiding these measures (e.g. the use of video link) and a legal framework for such provisions is advantageous.

59. Criteria defined by national law may also determine the categories of persons who may receive protection and under what conditions. It is predictable that serious crimes will attract the greatest resources, but experience suggests that some degree of protection may be relevant in appropriate cases of a lesser crime if a witness is in jeopardy. Experience also suggests that many lesser crimes may cumulatively become a larger problem if potential witnesses do not feel confident to report crimes and give evidence. This malaise is evident in some inner city areas.

IV. POLICY PROCESSES AND RISK ASSESSMENT

60. Every society must deal with the reality of limited resources. A rational process must therefore be developed to determine the level of appropriate resources and to allocate those resources that are actually made available. That process begins with an objective analysis of the risks to be faced, called threat assessment, that sets priorities among the potential targets to be protected and the methods of protection upon which resources should be expended.

61. The threat assessment process should be systemic in nature, taking into consideration all of the elements at risk within the criminal justice system. The ultimate power of decision should rest with the management of the agency having the responsibility to provide protection for these elements. However, provision must be made for active input and participation in the process by those being protected and by those furnishing pertinent intelligence.

62. As a matter of practicality, budgetary decisions are usually made at the political level. Budgetary allocations should, however, be made also at the professional level, after the consultation process described above. In the administrative world, budgets are fixed years in advance. Nevertheless, changing conditions require continuous reappraisal, reaction, and reallocation of priorities and resources, so that the responses of the system are not merely reactive.

63. By this it is meant that the intelligence function and risk analysis must be a continuous, flexible and innovative process in which changes in conditions and newly received intelligence lead to appropriate precautions to prevent tragedy and not simply to increased security for survivors after a witness or judge has been murdered. However, should a tragedy occur, the overriding policy consideration must be that the best deterrent to future assaults is a massive and effective response.

64. As individuals take actions based on their perceived self-interest, they will not act if they do not readily perceive certain attacks as benefiting their cause. As such, it must become an absolute standard operating procedure that all those who attack any of the actors of the criminal justice system have to be identified, apprehended, and brought to justice, no matter what resources must be committed to the task. Such attackers and their associates must contemplate such acts as absolute no-win, and even counterproductive, situations. This is a policy decision that any criminal justice system has a right to demand of its governmental leaders.

V. SUMMARY

65. Any of the actors in criminal justice proceedings can be threatened by violence, which may be emotional or irrational, symbolic, case-specific or exemplary in nature. Protective activities fall under the areas of awareness programmes, site hardening, personal protection and intelligence. A vigilant attitude is an essential prerequisite for an effective personal security plan and can be incorporated into a prospective target's lifestyle, with little effort. Other protective activities can be expensive endeavours: those managing such programmes can maximize cost-effectiveness by planning preventive efforts from the point of view of potential assailants. The attackers' self-interests must be taken into account by the authorities in their strategic planning. If an assault or bombing is committed, it is of critical importance that the perpetrators and their organization be brought to justice, no matter what resources are needed.

66. The actual tactics developed and the distribution of scarce resources should be based on accurate, dynamic and comprehensive threat assessments. By necessity, such distribution will be in measured responses that must be constantly managed so as to stay ahead of the threat, rather than to be reactive to assaults and incidents. That process of rational risk management requires orderly procedures to determine the level of resources necessary to allow a criminal justice system to function without undue threat of interference and to determine their most appropriate allocation. Because other elements of government aggressively compete for those same resources in order to guard their own interests, the crucial question is the p 'itical commitment of the decision makers to provide the resources needed to protect critical elements of the criminal justice system. All must realize that the judicial function of government must go on in a free and open manner. The rule of law is dependent on a secure criminal justice environn Whenever security is lacking, the civilized functioning of society is in jeopardy and violence will prevail.